



TC06693

Appeal number: TC/2018/02862

*INCOME TAX – penalty for failure to make returns timeously – Section 8
TMA – return not issued to establish chargeability – notice to file not valid –
no obligation to file – penalties not properly imposed – appeal allowed*

**FIRST-TIER TRIBUNAL
TAX CHAMBER**

LUCY MARIE HIGGINS

Appellant

- and -

**THE COMMISSIONERS FOR HER MAJESTY'S Respondents
REVENUE & CUSTOMS**

TRIBUNAL: JUDGE ANNE SCOTT

The Tribunal determined the appeal on 8 August 2018 without a hearing under the provisions of Rule 26 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009 (default paper cases) having first read the Notice of Appeal dated 17 April 2018 (with enclosures), HMRC's Statement of Case (with enclosures) acknowledged by the Tribunal on 19 June 2018 and the Appellant's Reply dated 28 June 2018.

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DECISION

The issue

1. The appellant is appealing against penalties that HMRC have imposed under Schedule 55 of the Finance Act 2009 (“Schedule 55”) for a failure to submit a self-assessment tax return timeously for 2015/16.
2. The penalties can be summarised as follows:
 - (a) A £100 late filing penalty imposed under paragraph 3 Schedule 55 Finance Act 2009 (“Schedule 55”) on 11 August 2017.
 - (b) “Daily” penalties amounting to £900 imposed under paragraph 4 Schedule 55 on 30 January 2018.
 - (c) A 6 month late filing penalty amounting to £300 imposed under paragraph 5 Schedule 55 on 30 January 2018.
3. The respondents (“HMRC”) have said in their Statement of Case that they will not be putting a case for the daily penalties and thus they accept that that aspect of the appeal should be allowed. This appeal, therefore, is against the late filing penalty and the 6 month penalty.

Background

4. The appellant is a teacher and has always paid tax under PAYE.
5. On 26 October 2016, HMRC issued a P800 tax calculation intimating that she had underpaid tax of £100.20 for 2015/16 because Jobseekers Allowance had not had tax deducted. HMRC requested voluntary payment.
6. On 18 January 2017, a further voluntary payment letter was sent to her informing her that because she had not made a voluntary payment or come to an arrangement to pay, the outstanding tax would be collected via the self-assessment system.
7. On 12 April 2017, HMRC put her into the self-assessment system.
8. On 21 April 2017 a tax return was issued to the appellant. She denies ever having received any such tax return.
9. On 11 August 2017, the £100 late filing penalty was issued.
10. On 22 September 2017, the appellant contacted HMRC asking why the underpayment was not collected through the PAYE system. She also states that she had telephoned the HMRC helpline in late 2016 and had been told that small underpayments would be collected through the PAYE system. HMRC’s self-assessment records have no note of that (as they would not as at that point she was not in self-assessment).

11. The filing date for the return was 28 July 2017 for both a non-electronic return and an electronic return.

12. As the return was not received by the filing date HMRC issued the penalties.

HMRC's argument

5 13. Shortly put, HMRC argue that where a tax return is issued in terms of section 8 Taxes Management Act 1970 ("TMA") then if a taxpayer does not file the return on time the penalty regime in Schedule 55 is engaged.

The appellant's argument

10 14. The appellant has had to employ a tax adviser. That adviser submitted the Reply to the Statement of Case. Shortly put, reliance is placed on *Lennon v HMRC*¹ ("Lennon") and other cases.

Discussion

15 15. Section 8(1)(a) TMA states as follows:

"(1) For the purpose of establishing the amounts in which a person is chargeable to income tax and capital gains tax for a year of assessment, and the amount payable by him by way of income tax for that year, he may be required by a notice given to him by an officer of the Board –

(a) to make and deliver to the officer, a return containing such information as may reasonably be required in pursuance of the notice....."

20 16. In this case when HMRC issued the P800 to the appellant they knew precisely how much tax she owed, namely £100.20. The situation had not changed when they issued the tax return.

17. Therefore the tax return most certainly was not issued for the purpose of establishing the amount in which the appellant was chargeable to income tax.

25 18. Judge Popplewell upheld the appeal in *Lennon* and in a subsequent case *Groves v HMRC*² he annexed an extract from *Lennon* of what he describes as his review of the relevant law.

19. I agree entirely with that review and adopt it.

30 20. In particular, I agree with the proposition that an appellant can challenge the imposition of a penalty by asserting that the notice to file is invalid. It can only be valid if it is issued for the purpose stipulated in the section.

21. The notice to file in this instance was invalid because HMRC already knew the amount of tax due. As the notice was invalid, there was no obligation on the appellant

¹ 2018 UKFTT 220 (TC)

² 2018 UKFTT 311 (TC)

to file a self-assessment return for 2015/16, so the penalty regime in Schedule 55 cannot be engaged.

22. The appeal is allowed.

23. This document contains full findings of fact and reasons for the decision. Any party dissatisfied with this decision has a right to apply for permission to appeal against it pursuant to Rule 39 of the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009. The application must be received by this Tribunal not later than 56 days after this decision is sent to that party. The parties are referred to “Guidance to accompany a Decision from the First-tier Tribunal (Tax Chamber)” which accompanies and forms part of this decision notice.

**ANNE SCOTT
TRIBUNAL JUDGE**

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RELEASE DATE: 29 August 2018